

EXHIBIT H

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County of San Diego

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

PERSIS KNIPE, an individual, on behalf of
herself, on behalf of all persons similarly
situated,

Plaintiff,

vs.

AMAZON.COM, INC., a Corporation;
AMAZON LOGISTICS, INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2017-00029426-CU-DE-CTL

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF CAL. LAB.
CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL. LAB.
CODE §§ 510, 1194 & 1198, *et seq.*;
4. FAILURE TO PROVIDE
ACCURATE ITEMIZED STATEMENTS
IN VIOLATION OF CAL. LAB. CODE §
226; and,
5. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802.

DEMAND FOR A JURY TRIAL

1 Plaintiff Persis Knipe ("PLAINTIFF"), an individual, on behalf of herself and all other
2 similarly situated current and former employees, alleges on information and belief, except his
3 own acts and knowledge, the following:

4 5 INTRODUCTION

6 1. Defendant Amazon.com, Inc. and Amazon Logistics, Inc. (collectively
7 "DEFENDANT") in order to service customers hires workers to aid DEFENDANT in providing
8 delivery services to DEFENDANT's customers. The cost, as proscribed by law, of the
9 personnel hired to work for DEFENDANT, includes not only the pay of these employees but
10 the cost of the employer's share of tax payments to the federal and state governments for income
11 taxes, social security taxes, medicare insurance, unemployment insurance and payments for
12 workers' compensation insurance ("Business Related Expenses"). To avoid the payment of
13 these legally proscribed Business Related Expenses to the fullest extent possible, DEFENDANT
14 devised a scheme to place the responsibility for the payment of these costs and expenses of
15 DEFENDANT on the shoulders of PLAINTIFF and other Delivery Drivers. As employer,
16 DEFENDANT is legally responsible for the payment of all these Business Related Expenses.
17 This lawsuit is brought on behalf of these Delivery Drivers who worked for DEFENDANT in
18 California and were classified as independent contractors, in order to collect the wages due them
19 as employees of DEFENDANT, the cost of the employer's share of payments to the federal and
20 state governments for income taxes, social security taxes, medicare insurance, unemployment
21 insurance and payments for workers' compensation insurance, plus penalties and interest.

22 23 THE PARTIES

24 2. DEFENDANT is a corporation which, at all relevant times mentioned herein,
25 conducted and continues to conduct substantial and regular business in the State of California.

26 3. PLAINTIFF has worked for DEFENDANT as a Delivery Driver since June of
27 2017 and has been classified by DEFENDANT as an independent contractor during her entire
28 employment with DEFENDANT.

1 4. California Labor Code Section 226.8 provides that “[i]t is unlawful for any person
2 or employer to engage in . . . [w]illful misclassification of an individual as an independent
3 contractor.” The penalty for willful misclassification of employees is a “civil penalty of not less
4 than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
5 each violation, in addition to any other penalties or fines permitted by law.” It is further
6 provided that, in the event that an employer is found to have engaged in “a pattern or practice
7 of these violations,” the penalties increase to “not less than ten thousand dollars (\$10,000) and
8 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other
9 penalties or fines permitted by law.” Cal. Labor Code § 226.8.

10 5. Here, DEFENDANT has willfully misclassified PLAINTIFF and other Delivery
11 Drivers as described in Cal. Labor Code § 226.8, and further, that DEFENDANT has engaged
12 in a “pattern or practice” of such violations as contemplated by the California Labor Code.

13 6. Upon hire, the position of a Delivery Driver was represented by DEFENDANT
14 to PLAINTIFF and the other Delivery Drivers as an independent contractor position capable
15 of paying a flat rate of pay for certain shifts. PLAINTIFF and other Delivery Drivers are not
16 compensated overtime wages for any of their time spent working in excess of eight (8) hours
17 in a workday, twelve (12) hours in a workday, and/or forty (40) hours in a workweek.
18 PLAINTIFF and other Delivery Drivers are paid the hourly rate to perform delivery services
19 on DEFENDANT’s behalf. PLAINTIFF and other Delivery Drivers are not compensated any
20 other wages besides the flat rate. However, it often takes PLAINTIFF and the other Delivery
21 Drivers more time to complete their deliveries than their scheduled shifts, but drivers do not
22 receive additional compensation for this extra time.

23 7. To perform their job duties, PLAINTIFF and the other Delivery Drivers perform
24 work subject to the control of DEFENDANT in that DEFENDANT has the authority to exercise
25 complete control over the work performed and the manner and means in which the work is
26 performed. DEFENDANT provides the customers, DEFENDANT provides the instructions
27 regarding where to make deliveries, in what order, and which route to take. PLAINTIFF and
28 other Delivery Drivers can be penalized or terminated for missing scheduled shifts.

1 DEFENDANT also instructs PLAINTIFF and other Delivery Drivers as to how to conduct
2 themselves with DEFENDANT's customers, what time to make their deliveries, how to scan
3 packages, and how to properly pick up and return packages at DEFENDANT's warehouses.

4 8. California Labor Code § 3357 defines "employee" as "every person in the service
5 of an employer under any appointment or contract of hire or apprenticeship, express or implied,
6 oral or written, whether lawfully or unlawfully employed." In addition to the California Labor
7 Code's presumption that workers are employees, the California Supreme Court has determined
8 the most significant factor to be considered in distinguishing an independent contractor from
9 an employee is whether the *employer or principal has control or the right to control the work*
10 *both as to the work performed and the manner and means in which the work is performed.*
11 DEFENDANT heavily controls both the work performed and the manner and means in which
12 PLAINTIFF and the other Delivery Drivers perform their work in that:

13 (a) PLAINTIFF and other Delivery Drivers are not involved in a distinct
14 business, but instead are provided with instructions as to how to perform their work and the
15 manner and means in which the work is to be performed by means of DEFENDANT's manuals
16 and written instructions;

17 (b) PLAINTIFF and other Delivery Drivers are continuously provided with
18 training and supervision, including following DEFENDANT's company documents and receive
19 training from DEFENDANT as to how and in what way to perform the delivery services;

20 (c) DEFENDANT sets the requirements as to what policies and procedures
21 all of the Delivery Drivers were to follow, including how and when to deliver DEFENDANT's
22 packages;

23 (d) PLAINTIFF and other Delivery Drivers have no opportunity for profit or
24 loss because DEFENDANT only pays these workers based on their scheduled shifts;

25 (e) PLAINTIFF and other Delivery Drivers perform delivery services which
26 is part of DEFENDANT's principal business and is closely integrated with and essential to the
27 employer's business of providing on demand delivery services to their customers;

28 (f) PLAINTIFF and other Delivery Drivers perform the work themselves and

1 do not hire others to perform their work for them;

2 (g) PLAINTIFF and other Delivery Drivers do not have the authority to make
3 employment-related personnel decisions;

4 (h) PLAINTIFF and other Delivery Drivers perform their work in a particular
5 order and sequence in accordance with DEFENDANT's company policy; and,

6 (i) DEFENDANT has the "right" to control every critical aspect of
7 DEFENDANT's daily delivery services operations.

8 9. As a result, stripped of all the legal fictions and artificial barriers to an honest
9 classification of the relationship between PLAINTIFF and all the other Delivery Drivers on the
10 one hand, and DEFENDANT on the other hand, PLAINTIFF and all the other Delivery Drivers
11 are and were employees of DEFENDANT and not independent contractors of DEFENDANT
12 and should therefore be properly classified as non-exempt, hourly employees.

13 10. PLAINTIFF brings this Class Action on behalf of herself and a California class,
14 defined as all individuals who worked for DEFENDANT in California as Delivery Drivers and
15 who were classified as independent contractors (the "CALIFORNIA CLASS") at any time
16 during the period beginning four (4) years prior to the filing of this Complaint and ending on
17 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in
18 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million
19 dollars (\$5,000,000.00).

20 11. As a matter of company policy, practice and procedure, DEFENDANT has
21 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member as
22 "independent contractors" in order to unlawfully avoid compliance with all applicable federal
23 and state laws that require payment for all time worked, business expenses, and the employer's
24 share of payroll taxes and mandatory insurance. As a result of the scheme to defraud the federal
25 and state governments and the CALIFORNIA CLASS Members, PLAINTIFF and the
26 CALIFORNIA CLASS Members are underpaid throughout their employment with
27 DEFENDANT. The true names and capacities, whether individual, corporate, associate or
28 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown

1 to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal.
2 Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges that
3 each of the Defendants designated herein is legally responsible in some manner for the unlawful
4 acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect
5 the true names and capacities of the Defendants when they have been ascertained and become
6 known.

7 12. The agents, servants and/or employees of the Defendants and each of them
8 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
9 as the agent, servant and/or employee of the Defendants, and personally participated in the
10 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
11 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
12 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the
13 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,
14 servants and/or employees.

15 THE CONDUCT

16
17 13. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA
18 CLASS Members as defined by DEFENDANT is executed by them through the performance
19 of non-exempt labor.

20 14. Although PLAINTIFF and the other CALIFORNIA CLASS Members perform
21 non-exempt labor subject to DEFENDANT's complete control over the manner and means of
22 performance, DEFENDANT instituted a blanket classification policy, practice and procedure
23 by which all of these CALIFORNIA CLASS Members are classified as "independent
24 contractors" exempt from compensation for overtime worked, meal breaks and rest breaks, and
25 reimbursement for business related expenses. By reason of this uniform misclassification, the
26 CALIFORNIA CLASS Members are also required to pay DEFENDANT 's share of payroll
27 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
28 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members

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7 12. The agents, servants and/or employees of the Defendants and each of them
8 acting on behalf of the Defendants acted within the course and scope of his, her or its authority
9 as the agent, servant and/or employee of the Defendants, and personally participated in the
10 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
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25 reimbursement for business related expenses. By reason of this uniform misclassification, the
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27 taxes and mandatory insurance premiums. As a result of this uniform misclassification practice,
28 policy and procedure applicable to PLAINTIFF and the other CALIFORNIA CLASS Members

1 who perform this work for DEFENDANT, DEFENDANT committed acts of unfair competition
2 in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
3 (the "UCL"), by engaging in a company-wide policy, practice and procedure which uniformly
4 fails to properly classify PLAINTIFF and the other CALIFORNIA CLASS Members as
5 employees and thereby fails to pay them wages for all time worked, reimbursement of business
6 related expenses, fails to provide them with meal and rest breaks, and fails to reimburse these
7 employees for the employer's share of payroll taxes and mandatory insurance. The proper
8 classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's
9 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
10 California Labor Code and regulations promulgated thereunder as herein alleged.
11 DEFENDANT does not have in place a policy, practice or procedure that provides meal and/or
12 rest breaks to PLAINTIFF and CALIFORNIA CLASS Members as evidenced by
13 DEFENDANT's business records which contain no record of these breaks.

14 15. DEFENDANT, as a matter of law, has the burden of proving that employees are
15 properly classified and that DEFENDANT otherwise complies with applicable laws.
16 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the
17 CALIFORNIA CLASS Members as independent contractors.

18 16. PLAINTIFF and all the CALIFORNIA CLASS Members are and were uniformly
19 classified and treated by DEFENDANT as independent contractors at the time of hire and
20 thereafter, DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and
21 the CLASS Members are properly classified under the applicable Industrial Welfare
22 Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable labor
23 laws. Since DEFENDANT affirmatively and willfully misclassified PLAINTIFF and
24 CALIFORNIA CLASS Members in compliance with California labor laws, DEFENDANT's
25 practices violated and continue to violate California law. In addition, DEFENDANT acted
26 deceptively by falsely and fraudulently classifying PLAINTIFF and each CALIFORNIA
27 CLASS Member as independent contractors when DEFENDANT knew or should have known
28 that this classification was false and not based on known facts. DEFENDANT also acted

1 deceptively by violating the California labor laws, and as a result of this policy and practice,
2 DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by
3 paying the CALIFORNIA CLASS less than the amount competitors paid who complied with
4 the law and cheated the CALIFORNIA CLASS by not paying them in accordance with
5 California law.

6 17. DEFENDANT as a matter of corporate policy, practice and procedure,
7 intentionally, knowingly and systematically fails to reimburse and indemnify PLAINTIFF and
8 the other CALIFORNIA CLASS Members for required business expenses incurred by
9 PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging
10 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
11 are required to indemnify employees for all expenses incurred in the course and scope of their
12 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
13 her employee for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
15 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
16 believed them to be unlawful."

17 18. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
18 Members as a business expense, are required by DEFENDANT to use personal cellular phones
19 as a result of and in furtherance of their job duties as employees for DEFENDANT but are not
20 reimbursed or indemnified by DEFENDANT for the cost associated with the use of the personal
21 cellular phones for DEFENDANT's benefit. In order to work as a Delivery Driver for
22 DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS Members are required to use
23 DEFENDANT's mobile application and as such it is mandatory to have a cell phone that is
24 compatible with DEFENDANT's mobile application. As a result, in the course of their
25 employment with DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS
26 incurred unreimbursed business expenses which include, but are not limited to, costs related to
27 the use of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.
28 Further, PLAINTIFF and other CALIFORNIA CLASS Members are also not reimbursed or

1 indemnified by DEFENDANT for the cost associated with using their personal vehicles while
2 performing for DEFENDANT. As a result, in the course of their employment with
3 DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS incurred
4 unreimbursed business expenses which include, but are not limited to, costs related to travel all
5 on behalf of and for the benefit of DEFENDANT.

6 19. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
7 members of the CALIFORNIA CLASS with complete and accurate wage statements which fail
8 to show, among other things, the correct amount of time worked, including, work performed
9 in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek. Cal. Lab.
10 Code § 226 provides that every employer shall furnish each of his or her employees with an
11 accurate itemized wage statement in writing showing, among other things, gross wages earned
12 and all applicable hourly rates in effect during the pay period and the corresponding amount of
13 time worked at each hourly rate. As a result, DEFENDANT provides PLAINTIFF and the other
14 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
15 § 226.

16 20. By reason of this uniform conduct applicable to PLAINTIFF and all the
17 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in
18 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
19 (the "UCL"), by engaging in a company-wide policy, practice and procedure which fails to
20 correctly classify PLAINTIFF and the CALIFORNIA CLASS Members as employees. The
21 proper classification of these employees is DEFENDANT's burden. As a result of
22 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
23 failed to pay all required wages for work performed by PLAINTIFF and other CALIFORNIA
24 CLASS Members and violated the California Labor Code and regulations promulgated
25 thereunder as herein alleged.

26 21. Specifically as to PLAINTIFF, she has worked for DEFENDANT in California
27 as a Delivery Driver and has been classified by DEFENDANT as an independent contractor
28 June of 2017. Upon hire, the position of a Deliver Driver was represented by DEFENDANT

1 to PLAINTIFF as an independent contractor position capable of paying an flat rate for
2 scheduled shifts assigned by DEFENDANT. PLAINTIFF as a Delivery Driver, has been
3 classified by DEFENDANT as an independent contractor and thus does not receive pay for all
4 time worked, including overtime worked and does not receive reimbursement for all necessary
5 business expenses incurred on DEFENDANT's behalf. During the CALIFORNIA CLASS
6 PERIOD, PLAINTIFF has also been required to perform work as ordered by DEFENDANT for
7 more than five (5) hours during a shift without receiving a meal or rest break as evidenced by
8 daily time reports for PLAINTIFF. PLAINTIFF therefore forfeits meal and rest breaks without
9 additional compensation and in accordance with DEFENDANT's strict corporate policy and
10 practice which does not provide for mandatory meal and rest breaks from time to time. The
11 amount in controversy for PLAINTIFF individually does not exceed the sum or value of
12 \$75,000.

13 14 **THE CALIFORNIA CLASS**

15 22. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
16 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
17 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all
18 individuals who worked for DEFENDANT in California as Delivery Drivers and who were
19 classified as independent contractors (the "CALIFORNIA CLASS") at any time during the
20 period beginning four (4) years prior to the filing of this Complaint and ending on the date as
21 determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy
22 for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars
23 (\$5,000,000.00).

24 23. To the extent equitable tolling operates to toll claims by the CALIFORNIA
25 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
26 accordingly.

27 24. All CALIFORNIA CLASS Members who performed and continue to perform this
28 work for DEFENDANT during the CALIFORNIA CLASS PERIOD are similarly situated in

1 that they are subject to DEFENDANT's uniform policy and systematic practice that requires
2 them to perform work without compensation as required by law.

3 25. DEFENDANT, as a matter of corporate, policy, practice and procedure, and in
4 violation of the applicable California Labor Code, Industrial Welfare Commission ("IWC")
5 Wage Order requirements, and the applicable provisions of California law, intentionally,
6 knowingly and willfully engages in a practice whereby DEFENDANT unfairly, unlawfully and
7 deceptively instituted a practice to ensure that all individuals employed as independent
8 contractors are not properly classified as non-exempt employees from the requirements of
9 California Labor Code §§ 510, *et seq.*

10 26. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly violated
11 the rights of the PLAINTIFF and the CALIFORNIA CLASS Members under California law,
12 without limitation, in the following manners:

- 13 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
14 §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while acting as
15 employer, devised and implemented a scheme whereby PLAINTIFF and
16 the CALIFORNIA CLASS Members are forced to unlawfully, unfairly
17 and deceptively shoulder the cost of DEFENDANT's wages for all unpaid
18 wages, business related expenses, and DEFENDANT's share of
19 employment taxes, social security taxes, unemployment insurance and
20 workers' compensation insurance;
- 21 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
22 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
23 having in place company policies, practices and procedures that uniformly
24 misclassified PLAINTIFF and the CALIFORNIA CLASS Members as
25 independent contractors;
- 26 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
27 §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or deceptively
28 failing to have in place a company policy, practice and procedure that

1 accurately determined the amount of working time spent by PLAINTIFF
 2 and the CALIFORNIA CLASS Members performing non-exempt
 3 employee labor;

4 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
 5 §§ 17200, *et seq.* the ("UCL"), by failing to provide PLAINTIFF and the
 6 other members of the CALIFORNIA CLASS with all legally required
 7 meal and rest breaks;

8 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code
 9 §§ 17200, *et seq.* the ("UCL") by violating Cal. Lab. Code § 2802 by
 10 failing to reimburse PLAINTIFF and the CALIFORNIA CLASS members
 11 with necessary expenses incurred in the discharge of their job duties; and,

12 (f) Committing an act of unfair competition in violation of the UCL, by
 13 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct
 14 overtime pay to PLAINTIFF and the members of the CALIFORNIA
 15 CLASS who are improperly classified as exempt, and retaining the unpaid
 16 overtime to the benefit of DEFENDANT.

17 27. As a result of DEFENDANT's uniform policies, practices and procedures, there
 18 are numerous questions of law and fact common to all CALIFORNIA CLASS Members who
 19 worked for during the CALIFORNIA CLASS PERIOD. These questions include, but are not
 20 limited, to the following:

21 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members are
 22 misclassified as independent contractors by DEFENDANT;

23 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members are
 24 afforded all the protections of the California Labor Code that apply when
 25 properly classified as non-exempt employees;

26 (c) Whether DEFENDANT's policies, practices and pattern of conduct
 27 described in this Complaint was and is unlawful;

28 (d) Whether DEFENDANT unlawfully fails to pay their share of state and

1 federal employment taxes as required by state and federal tax laws;

2 (e) Whether DEFENDANT's policy, practice and procedure of classifying the
3 CALIFORNIA CLASS Members as independent contractors exempt from
4 hourly wages laws for all time worked and failing to pay the
5 CALIFORNIA CLASS Members all amounts due violates applicable
6 provisions of California State law;

7 (f) Whether DEFENDANT unlawfully fails to keep and furnish the
8 CALIFORNIA CLASS Members with accurate records of all time
9 worked;

10 (g) Whether DEFENDANT has engaged in unfair competition by the
11 above-listed conduct; and,

12 (h) Whether DEFENDANT's conduct was willful.

13 28. This Class Action meets the statutory prerequisites for the maintenance of a Class
14 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

15 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
16 that the joinder of all such persons is impracticable and the disposition of their claims as a class
17 will benefit the parties and the Court;

18 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
19 that are raised in this Complaint are common to the CALIFORNIA CLASS and will apply
20 uniformly to every CALIFORNIA CLASS Member;

21 (c) The claims of the representative PLAINTIFF are typical of the claims of
22 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA CLASS
23 Members, was classified as an independent contractor upon hiring based on the defined
24 corporate policies and practices and labors under DEFENDANT's systematic procedure that
25 failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS Members.
26 PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices.
27 PLAINTIFF and the CALIFORNIA CLASS Members were and are similarly or identically
28 harmed by the same unlawful, unfair, deceptive and persuasive pattern of misconduct engaged

1 in by DEFENDANT by deceptively telling all the CALIFORNIA CLASS Members that they
2 were not entitled to minimum wages, the employer's share of payment of payroll taxes and
3 mandatory insurance, and reimbursement for business expenses based on the defined corporate
4 policies and practices, and unfairly failed to pay these employees who were improperly
5 classified as independent contractors; and,

6 (d) The representative PLAINTIFF will fairly and adequately represent and
7 protect the interest of the CALIFORNIA CLASS, and has retained counsel who is competent
8 and experienced in Class Action litigation. There are no material conflicts between the claims
9 of the representative PLAINTIFF and the CALIFORNIA CLASS Members that would make
10 class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert
11 the claims of all employees in the CALIFORNIA CLASS.

12 29. In addition to meeting the statutory prerequisites to a Class Action, this Action
13 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution of separate actions by
16 individual members of the CALIFORNIA CLASS will create the risk of:

17 (i) Inconsistent or varying adjudications with respect to individual
18 members of the CALIFORNIA CLASS which would establish incompatible standards of
19 conduct for the parties opposing the CALIFORNIA CLASS; and/or,

20 (ii) Adjudication with respect to individual members of the
21 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests of the
22 other members not party to the adjudication or substantially impair or impeded their ability to
23 protect their interests.

24 (b) The parties opposing the CALIFORNIA CLASS have acted on grounds
25 generally applicable to the CALIFORNIA CLASS making appropriate class-wide relief with
26 respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and
27 treated the CALIFORNIA CLASS Members as independent contractors and, thereafter,
28 uniformly failed to take proper steps to determine whether the CALIFORNIA CLASS Members

1 were properly classified as independent contractors, and thereby denied these employees wages
2 and payments for business expenses and the employer's share of payroll taxes and mandatory
3 insurance as required by law.

4 (i) With respect to the First Cause of Action, the final relief on behalf
5 of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through
6 this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and
7 practices constitute unfair competition, along with incidental equitable relief as may be
8 necessary to remedy the conduct declared to constitute unfair competition.

9 (c) Common questions of law and fact exist as to members of the
10 CALIFORNIA CLASS with respect to the practices and violations of California and federal law
11 as listed above, and predominate over any question affecting only individual members, and a
12 Class Action is superior to other available methods for the fair and efficient adjudication of the
13 controversy, including consideration of:

14 (i) The interest of the CALIFORNIA CLASS Members in individually
15 controlling the prosecution or defense of separate actions;

16 (ii) The extent and nature of any litigation concerning the controversy
17 already commenced by or against members of the CALIFORNIA CLASS;

18 (iii) In the context of wage litigation because as a practical matter a
19 substantial number of individual CALIFORNIA CLASS members will avoid asserting their
20 legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an
21 individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only
22 means to assert their claims through a representative;

23 (iv) The desirability or undesirability of concentration the litigation of
24 the claims in the particular forum;

25 (v) The difficulties likely to be encountered in the management of a
26 Class Action; and,

27 (vi) The basis of DEFENDANT's policies and practices uniformly
28 applied to all the CALIFORNIA CLASS Members.

1 30. The Court should permit this Action to be maintained as a Class Action pursuant
2 to Cal. Code of Civ. Proc. § 382 because:

3 (a) The questions of law and fact common to the CALIFORNIA CLASS
4 predominate over any question affecting only individual members;

5 (b) A Class Action is superior to any other available method for the fair and
6 efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

7 (c) The CALIFORNIA CLASS Members are so numerous that it is impractical
8 to bring all CALIFORNIA CLASS Members before the Court;

9 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be able
10 to obtain effective and economic legal redress unless the action is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations and other improprieties,
13 and in obtaining adequate compensation for the damages and injuries which DEFENDANT's
14 actions have inflicted upon the CALIFORNIA CLASS;

15 (f) There is a community of interest in ensuring that the combined assets and
16 available insurance of DEFENDANT are sufficient to adequately compensate the
17 CALIFORNIA CLASS Members for any injuries sustained;

18 (g) DEFENDANT has acted or has refused to act on grounds generally
19 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate
20 with respect to the CLASS as a whole;

21 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
22 the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
23 DEFENDANT's Delivery Drivers in California classified as independent contractors during the
24 CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies, practices and
25 procedures as herein alleged; and,

26 (i) Class treatment provides manageable judicial treatment calculated to bring
27 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out
28 of DEFENDANT's conduct as to the CALIFORNIA CLASS Members.

1 31. DEFENDANT maintains records from which the Court can ascertain and identify
2 by name and job title, each of DEFENDANT's employees who have been systematically,
3 intentionally and uniformly subjected to DEFENDANT's corporate policies, practices and
4 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include
5 any additional job titles of similarly situated employees when they have been identified.

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 32. PLAINTIFF further brings the Second, Third, Fourth and Fifth Causes of Action
9 on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who
10 are or previously were employed by DEFENDANT in California as Delivery Drivers and who
11 were classified as Independent Contractors (the "CALIFORNIA LABOR SUB-CLASS") at any
12 time during the period three (3) years prior to the filing of the Complaint and ending on the date
13 as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant
14 to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of
15 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

16 33. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
17 violation of the applicable California Labor Code ("Labor Code"), and Industrial Welfare
18 Commission ("IWC") Wage Order requirements intentionally, knowingly, and wilfully, on the
19 basis of job title alone and without regard to the actual overall requirements of the job,
20 systematically classified PLAINTIFF and the other members of the CALIFORNIA LABOR
21 SUB-CLASS as independent contractors in order to avoid the payment of all wages, and in
22 order to avoid the obligations under the applicable California Labor Code provisions. To the
23 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS
24 against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted
25 accordingly.

26 34. DEFENDANT maintains records from which the Court can ascertain and identify
27 by job title each of DEFENDANT's employees who as CALIFORNIA LABOR SUB-CLASS
28 Members have been systematically, intentionally and uniformly misclassified as independent

1 contractors as a matter of DEFENDANT's corporate policy, practices and procedures.
2 PLAINTIFF will seek leave to amend the complaint to include these additional job titles when
3 they have been identified.

4 35. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
5 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

6 36. DEFENDANT, as a matter of corporate policy, practice and procedure,
7 erroneously classified all Delivery Drivers as independent contractors making these employees
8 exempt from California labor laws. All Delivery Drivers, including PLAINTIFF, perform the
9 same finite set of tasks and are paid by DEFENDANT according to uniform and systematic
10 company procedures, which, as alleged herein above, fails to correctly pay minimum wage
11 compensation. This business practice was uniformly applied to each and every member of the
12 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be
13 adjudicated on a class-wide basis.

14 37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
15 under California law by:

- 16 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by
17 misclassifying and thereby failing to pay PLAINTIFF and the members of
18 the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for
19 which DEFENDANT is liable;
- 20 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
21 failing to pay PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS the correct overtime pay for a workday longer than
23 eight (8) hours and/or a workweek longer than forty (40) hours for which
24 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 25 (c) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF and the
26 members of the CALIFORNIA LABOR SUB-CLASS who are improperly
27 classified as independent contractors with an accurate itemized statement
28 in writing showing the gross wages earned, the net wages earned, all

1 applicable hourly rates in effect during the pay period and the
2 corresponding amount of time worked at each hourly rate by the
3 employee; and,

- 4 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
5 the CALIFORNIA CLASS members with necessary expenses incurred in
6 the discharge of their job duties.

7 38. This Class Action meets the statutory prerequisites for the maintenance of a Class
8 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 9 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
10 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
11 Members is impracticable and the disposition of their claims as a class will
12 benefit the parties and the Court;

- 13 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
14 that are raised in this Complaint are common to the CALIFORNIA
15 LABOR SUB-CLASS and will apply uniformly to every member of the
16 CALIFORNIA LABOR SUB-CLASS;

- 17 (c) The claims of the representative PLAINTIFF are typical of the claims of
18 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
19 like all other members of the CALIFORNIA LABOR SUB-CLASS is
20 improperly classified as an independent contractor and was thus denied
21 minimum wage pay and meal and rest breaks, among other things, as a
22 result of DEFENDANT's systematic classification practices. PLAINTIFF
23 and all other members of the CALIFORNIA LABOR SUB-CLASS
24 sustained economic injuries arising from DEFENDANT's violations of the
25 laws of California; and,

- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
28 retained counsel who are competent and experienced in Class Action

1 litigation. There are no material conflicts between the claims of the
2 representative PLAINTIFF and the members of the CALIFORNIA
3 LABOR SUB-CLASS that would make class certification inappropriate.
4 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
5 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

6 39. In addition to meeting the statutory prerequisites to a Class Action, this action is
7 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

8 (a) Without class certification and determination of declaratory, injunctive,
9 statutory and other legal questions within the class format, prosecution of
10 separate actions by individual members of the CALIFORNIA LABOR
11 SUB-CLASS will create the risk of:

- 12 1) Inconsistent or varying adjudications with respect to individual
13 members of the CALIFORNIA LABOR SUB-CLASS which
14 would establish incompatible standards of conduct for the parties
15 opposing the CALIFORNIA LABOR SUB-CLASS; or,
16 2) Adjudication with respect to individual members of the
17 CALIFORNIA LABOR SUB-CLASS which would as a practical
18 matter be dispositive of interests of the other members not party to
19 the adjudication or substantially impair or impede their ability to
20 protect their interests.

21 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
22 or refused to act on grounds generally applicable to the CALIFORNIA
23 LABOR SUB-CLASS, making appropriate class-wide relief with respect
24 to the CALIFORNIA LABOR SUB-CLASS as a whole in that the
25 DEFENDANT uniformly classified and treated the members of the
26 CALIFORNIA LABOR SUB-CLASS as independent contractors and,
27 thereafter, uniformly failed to take proper steps to determine whether the
28 CALIFORNIA LABOR SUB-CLASS Members were properly classified

1 as independent contractors, and thereby denied these employees the
2 protections afforded to them under the California Labor Code;

3 (c) Common questions of law and fact predominate as to the members of the
4 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and
5 violations of California law as listed above, and predominate over any
6 question affecting only individual CALIFORNIA LABOR SUB-CLASS
7 Members, and a Class Action is superior to other available methods for the
8 fair and efficient adjudication of the controversy, including consideration
9 of:

10 1) The interests of the members of the CALIFORNIA LABOR SUB-
11 CLASS in individually controlling the prosecution or defense of
12 separate actions in that the substantial expense of individual actions
13 will be avoided to recover the relatively small amount of economic
14 losses sustained by the individual CALIFORNIA LABOR SUB-
15 CLASS Members when compared to the substantial expense and
16 burden of individual prosecution of this litigation;

17 2) Class certification will obviate the need for unduly duplicative
18 litigation that would create the risk of:

19 A. Inconsistent or varying adjudications with respect to
20 individual members of the CALIFORNIA LABOR SUB-
21 CLASS, which would establish incompatible standards of
22 conduct for the DEFENDANT; and/or,

23 B. Adjudications with respect to individual members of the
24 CALIFORNIA LABOR SUB-CLASS would as a practical
25 matter be dispositive of the interests of the other members
26 not parties to the adjudication or substantially impair or
27 impede their ability to protect their interests;

28 3) In the context of wage litigation because a substantial number of

1 individual CALIFORNIA LABOR SUB-CLASS Members will
2 avoid asserting their legal rights out of fear of retaliation by
3 DEFENDANT, which may adversely affect an individual's job
4 with DEFENDANT or with a subsequent employer, the Class
5 Action is the only means to assert their claims through a
6 representative; and,

- 7 4) A class action is superior to other available methods for the fair and
8 efficient adjudication of this litigation because class treatment will
9 obviate the need for unduly and unnecessary duplicative litigation
10 that is likely to result in the absence of certification of this action
11 pursuant to Cal. Code of Civ. Proc. § 382.

12 40. This Court should permit this action to be maintained as a Class Action pursuant
13 to Cal. Code of Civ. Proc. § 382 because:

- 14 (a) The questions of law and fact common to the CALIFORNIA LABOR
15 SUB-CLASS predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members;
- 17 (b) A Class Action is superior to any other available method for the fair and
18 efficient adjudication of the claims of the members of the CALIFORNIA
19 LABOR SUB-CLASS because in the context of employment litigation a
20 substantial number of individual CALIFORNIA LABOR SUB-CLASS
21 Members will avoid asserting their rights individually out of fear of
22 retaliation or adverse impact on their employment;
- 23 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
24 numerous that it is impractical to bring all members of the CALIFORNIA
25 LABOR SUB-CLASS before the Court;
- 26 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
27 Members, will not be able to obtain effective and economic legal redress
28 unless the action is maintained as a Class Action;

- 1 (e) There is a community of interest in obtaining appropriate legal and
 2 equitable relief for the acts of unfair competition, statutory violations and
 3 other improprieties, and in obtaining adequate compensation for the
 4 damages and injuries which DEFENDANT's actions have inflicted upon
 5 the CALIFORNIA LABOR SUB-CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
 7 DEFENDANT are sufficient to adequately compensate the members of the
 8 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally applicable
 10 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
 11 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
 12 CLASS as a whole;
- 13 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
 14 ascertainable from the business records of DEFENDANT. The
 15 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
 16 CLASS Members who are or previously were employed by DEFENDANT
 17 in California as Delivery Drivers and classified as independent contractors
 18 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 19 (i) Class treatment provides manageable judicial treatment calculated to bring
 20 a efficient and rapid conclusion to all litigation of all wage and hour
 21 related claims arising out of the conduct of DEFENDANT.

22 JURISDICTION AND VENUE

24 41. This Court has jurisdiction over this Action pursuant to California Code of Civil
 25 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
 26 Action is brought as a Class Action on behalf PLAINTIFF and on behalf of similarly situated
 27 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. Section 382.

28 42. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395 and

1 395.5, because PLAINTIFF resides in this County and DEFENDANT (i) currently maintains
 2 and at all relevant times maintained its principal offices and facilities in this County and/or
 3 conducts substantial business in this County, and (ii) committed the wrongful conduct herein
 4 alleged in this County against members of the CALIFORNIA CLASS and CALIFORNIA
 5 LABOR SUB-CLASS.

6 7 **FIRST CAUSE OF ACTION**

8 **For Unlawful, Unfair and Deceptive Business Practices**

9 **[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]**

10 **(By PLAINTIFF and the CLASS and Against All Defendants)**

11 43. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
 12 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 44. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code
 14 § 17021.

15 45. Section 17200 of the California Business & Professions Code defines unfair
 16 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200
 17 applies to violations of labor laws in the employment context. Section 17203 authorizes
 18 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
 19 follows:

20 Any person who engages, has engaged, or proposes to engage in unfair
 21 competition may be enjoined in any court of competent jurisdiction. The court
 22 may take such orders or judgments, including the appointment of a receiver, as
 23 may be necessary to prevent the use or employment by any person of any practice
 which constitutes unfair competition, as defined in this chapter, or as may be
 necessary to restore to any person in interest any money or property, real or
 personal, which may have been acquired by means of such unfair competition.

24 California Business & Professions Code § 17203.

25 46. By the conduct alleged herein, DEFENDANT has engaged and continues to
 26 engage in a business practice which violates California law, including but not limited to the
 27 applicable Industrial Wage Orders, the California Labor Code including Sections 204, 221,
 28 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations

1 § 11090, for which this Court should issue declaratory, injunctive, and other equitable relief,
2 pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct
3 held to constitute unfair competition, including restitution of wages wrongfully withheld,
4 business expenses wrongfully withheld and for the payment of the employer's share of income
5 taxes, social security taxes, unemployment insurance and workers' compensation insurance.

6 47. By the conduct alleged herein DEFENDANT has obtained valuable property,
7 money, and services from PLAINTIFF, and the other members of the CALIFORNIA CLASS,
8 and has deprived them of valuable rights and benefits guaranteed by law, all to their detriment
9 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete.
10 Declaratory and injunctive relief is necessary to prevent and remedy this unfair competition, and
11 pecuniary compensation alone would not afford adequate and complete relief.

12 48. All the acts described herein as violations of, among other things, the California
13 Labor Code, California Code of Regulations and the Industrial Welfare Commission Wage
14 Orders, were unlawful, are in violation of public policy, are immoral, unethical, oppressive, and
15 unscrupulous, and are likely to deceive employees, and thereby constitute deceptive, unfair and
16 unlawful business practices in violation of Cal. Bus. and Prof. Code §§ 17200, *et seq.*

17 49. By the conduct alleged herein, DEFENDANT's practices are deceptive and
18 fraudulent in that DEFENDANT's uniform policy and practice is to represent to the
19 CALIFORNIA CLASS Members that they are not entitled to overtime and minimum wages,
20 payment for payroll taxes or mandatory insurance and other benefits as required by California
21 law, when in fact these representations are false and likely to deceive and for which this Court
22 should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
23 including restitution of wages wrongfully withheld.

24 50. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
25 and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other
26 members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANT.

28 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,

1 and do, seek such relief as may be necessary to restore to them the money and property which
2 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
3 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
4 unfair business practices, including earned but unpaid wages for all time worked.

5 52. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
6 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
7 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
8 engaging in any unlawful and unfair business practices in the future.

9 53. By the conduct alleged herein, DEFENDANT's practices are also unlawful, unfair
10 and deceptive in that DEFENDANT's uniform policies, practices and procedures fail to provide
11 all legally required meal and rest breaks to PLAINTIFF and the other members of the
12 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

13 54. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
14 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of payroll
15 taxes and mandatory insurance, and one (1) hour of pay for each workday in which an off-duty
16 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
17 for each workday in which a second off-duty meal period was not timely provided for each ten
18 (10) hours of work.

19 55. PLAINTIFF further demands on behalf of herself and each member of the
20 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which a rest
21 period was not timely provided as required by law.

22 56. By and through the unlawful and unfair business practices described herein,
23 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
24 other members of the CALIFORNIA CLASS, including earned wages for all time worked and
25 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
26 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
27 to unfairly compete against competitors who comply with the law.

28 57. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, and the California
 2 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
 3 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
 4 practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

5 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
 6 and do, seek such relief as may be necessary to restore to them the money and property which
 7 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
 8 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
 9 unfair business practices.

10 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
 11 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair
 12 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
 13 engaging in any unlawful and unfair business practices in the future.

14 60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
 15 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
 16 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.
 17 As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
 18 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
 19 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
 20 engage in these unlawful and unfair business practices.

21 **SECOND CAUSE OF ACTION**

22 **For Failure To Pay Minimum Wages**

23 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

24 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
 25 **and Against All Defendants)**

26 61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
 27 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
 28

1 paragraphs of this Complaint.

2 62. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 bring a claim for DEFENDANT's willful and intentional violations of the California Labor
4 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to
5 accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
6 Members.

7 63. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
8 public policy, an employer must timely pay its employees for all hours worked.

9 64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
10 commission is the minimum wage to be paid to employees, and the payment of a less wage than
11 the minimum so fixed is unlawful.

12 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
13 including minimum wage compensation and interest thereon, together with the costs of suit.

14 66. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
15 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
16 amount of time they worked. As set forth herein, DEFENDANT's uniform policy and practice
17 is to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS.

19 67. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
20 without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
21 result of implementing a uniform policy and practice that denied accurate compensation to
22 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to
23 minimum wage pay.

24 68. In committing these violations of the California Labor Code, DEFENDANT
25 inaccurately calculates the correct time worked and consequently underpays the actual time
26 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
27 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
28 benefits in violation of the California Labor Code, the Industrial Welfare Commission

1 requirements and other applicable laws and regulations.

2 69. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS do not receive
4 the correct minimum wage compensation for their time worked for DEFENDANT.

5 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS are paid less for time worked that
7 they are entitled to, constituting a failure to pay all earned wages.

8 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
9 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS for the true time they worked, PLAINTIFF and the other members of the
11 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
12 injury in amounts which are presently unknown to them and which will be ascertained
13 according to proof at trial.

14 72. DEFENDANT knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their time
16 worked. DEFENDANT systematically elected, either through intentional malfeasance or gross
17 nonfeasance, to not pay PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
18 for their labor as a matter of uniform company policy, practice and procedure, and
19 DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF and the other
20 members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time
21 worked.

22 73. In performing the acts and practices herein alleged in violation of California labor
23 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
24 all time worked and provide them with the requisite compensation, DEFENDANT acted and
25 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard
27 for their legal rights, or the consequences to them, and with the despicable intent of depriving
28 them of their property and legal rights, and otherwise causing them injury in order to increase

1 company profits at the expense of these employees.

2 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
3 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as
4 well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided
5 by the California Labor Code and/or other applicable statutes. To the extent minimum wage
6 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members
7 who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§
8 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties
9 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA
10 LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
11 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-
12 CLASS Members are entitled to seek and recover statutory costs.

13 14 **THIRD CAUSE OF ACTION**

15 **For Failure To Pay Overtime Wages**

16 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

19 75. PLAINTIFF and the CALIFORNIA CLASS Members reallege and incorporate
20 by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

21 76. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT failed
22 to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members overtime wages
23 for the time they worked in excess of the maximum hours permissible by law as required by Cal.
24 Lab. Code §§ 510 & 1198, even though PLAINTIFF and the CALIFORNIA LABOR SUB-
25 CLASS Members were regularly required to work, and did in fact work, overtime that
26 DEFENDANT never recorded as evidenced by DEFENDANT's business records and witnessed
27 by DEFENDANT's employees.

28 77. By virtue of DEFENDANT's unlawful failure to pay compensation to

1 PLAINTIFF and the CALIFORNIA CLASS Members for all overtime worked by these
2 employees, PLAINTIFF and CALIFORNIA CLASS Members have suffered, and will continue
3 to suffer, an economic in amounts which are presently unknown to them and which can be
4 ascertained according to proof at trial.

5 78. DEFENDANT knew or should have known that PLAINTIFF and the
6 CALIFORNIA CLASS Members are misclassified as independent contractors and
7 DEFENDANT's systematically elected, either through intentional malfeasance or gross
8 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice
9 and procedure.

10 79. PLAINTIFF and the CALIFORNIA CLASS Members therefore request recovery
11 of all compensation according to proof, interest, costs, as well as the assessment of any statutory
12 penalties against DEFENDANT in a sum as provided by the California Labor Code and/or other
13 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA
14 CLASS Members who have terminated their employment, these employees would also be
15 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein.
16 Further, PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members are entitled to
17 seek and recover statutory costs.

18 80. In performing the acts and practices herein alleged in violation of California labor
19 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
20 all overtime worked and provide them with the requisite overtime compensation, DEFENDANT
21 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
22 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
23 disregard for their legal rights, or the consequences to them, and with the despicable intent of
24 depriving them of their property and legal rights, and otherwise causing them injury in order to
25 increase corporate profits at the expense of these employees.

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FOURTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)**

81. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior of this Complaint.

82. Cal. Labor Code § 226 provides that an employer must furnish employees with an “accurate itemized statement in writing showing:

(1) gross wages earned,

(2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

(3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) net wages earned,

(6) the inclusive dates of the period for which the employee is paid,

(7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

(8) the name and address of the legal entity that is the employer, and

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

83. From time to time, DEFENDANT violated Labor Code § 226, in that DEFENDANT failed and continues to fail to properly and accurately itemize the amount of time worked by PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS at the effective rates of pay. DEFENDANT also violated Labor Code Section 226 in that DEFENDANT fails to properly and accurately itemize the amount of penalties paid to PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members when they miss their meal and rest breaks. Aside from the violations listed above in this paragraph, DEFENDANT fails to issue PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code §226 *et. seq.*

84. DEFENDANT knowingly and intentionally fails to comply with Labor Code § 226, causing damages to PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the true amount of time worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

FIFTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

85. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

86. Cal. Lab. Code § 2802 provides, in relevant part, that:

1 An employer shall indemnify his or her employee for all necessary expenditures
2 or losses incurred by the employee in direct consequence of the discharge of his
3 or her duties, or of his or her obedience to the directions of the employer, even
though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

4 87. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
5 failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
7 benefit. Specifically, DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA
8 LABOR SUB-CLASS members for expenses which include, but are not limited to, the cost
9 associated with the use of their personal cellular phones for DEFENDANT's benefit. In order
10 to work as a Deliver Driver for DEFENDANT, PLAINTIFF and other CALIFORNIA CLASS
11 Members are required to use DEFENDANT's mobile application and as such it is mandatory
12 to have a cell phone that is compatible with DEFENDANT's mobile application. As a result,
13 in the course of their employment with DEFENDANT, PLAINTIFF and other members of the
14 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which include,
15 but are not limited to, the costs related to the use of their personal cellular phones all on behalf
16 of and for the benefit of DEFENDANT. Further, PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members are also not reimbursed or indemnified by DEFENDANT for
18 the cost associated with using their personal vehicles while making deliveries for
19 DEFENDANT. As a result, in the course of their employment with DEFENDANT PLAINTIFF
20 and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses
21 which include, but are not limited to, costs related to travel all on behalf of and for the benefit
22 of DEFENDANT. These expenses are necessary to complete their principal job duties.
23 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
24 expectation. Although these expenses are necessary expenses incurred by PLAINTIFF and the
25 CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and
26 reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these
27 expenses as an employer is required to do under the laws and regulations of California.

28 88. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred

1 by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job
 2 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
 3 at the statutory rate and costs under Cal. Lab. Code § 2802.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
 6 severally, as follows:

7 1. On behalf of the CALIFORNIA CLASS:

- 8 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
 9 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 10 B) An order temporarily, preliminarily and permanently enjoining and restraining
 11 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 12 C) An order requiring DEFENDANT to pay minimum wages and all sums unlawfully
 13 withheld from compensation due to PLAINTIFF and the other members of the
 14 CALIFORNIA CLASS; and,
- 15 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
 16 for restitution of the sums incidental to DEFENDANT's violations due to
 17 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

18 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 19 A) That the Court certify the Second, Third, Fourth and Fifth Causes of Action
 20 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant
 21 to Cal. Code of Civ. Proc. § 382;
- 22 B) Compensatory damages, according to proof at trial, including compensation due
 23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS,
 24 during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus
 25 interest thereon at the statutory rate;
- 26 C) The wages of all terminated individuals in the CALIFORNIA LABOR
 27 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
 28 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

- 1 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 2 in which a violation occurs and one hundred dollars (\$100) per each member of
- 3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 5 an award of costs for violation of Cal. Lab. Code § 226; and,
- 6 E) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 7 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 8 costs of suit.
- 9 3. On all claims:
- 10 A) An award of interest, including prejudgment interest at the legal rate;
- 11 B) Such other and further relief as the Court deems just and equitable; and,
- 12 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
- 13 law, including, but not limited to, pursuant to Labor Code §218.5, §226 and/or
- 14 §1194, and/or §2802.

15
16 Dated: August 9, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

17
18 By: /s/ Norman Blumenthal
19 Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: August 9, 2017

BLUMENTHAL, NORDREHAUG & BHOWMIK LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff